



January 25, 2006

SENATE BILL No. 128

DIGEST OF SB 128 (Updated January 23, 2006 2:10 pm - DI 102)

Citations Affected: IC 3-5; IC 3-7; IC 3-10; IC 3-11; IC 3-11.5; IC 3-11.7.

Synopsis: Casting provisional ballot by challenged voter. Establishes additional standards for the challenging of voters by specifying that, except for party affiliation challenges in a primary election, a person may not challenge the right of an individual to vote at an election solely on the basis of the individual's: (1) actual or perceived affiliation with a political party; or (2) support or opposition to a candidate or the adoption of a public question. Provides that a voter who is challenged as ineligible to vote in the precinct must be provided with a provisional ballot. Relocates current law prohibiting challenges based solely on a person's status as a student or registration at an address in college provided housing to the new chapter concerning challenge standards. Repeals a superseded provision relating to voting by a challenged voter. Makes conforming amendments.

Effective: Upon passage.

Lawson C

January 9, 2006, read first time and referred to Committee on Elections and Civic Affairs.
January 24, 2006, amended, reported favorably — Do Pass.

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SB 128—LS 6559/DI 75+



January 25, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 128

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-4.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 4.5. Standards for Challenges to Voters**

5 **Sec. 1. This chapter applies to a challenge to a voter made by a**
6 **precinct election officer, a watcher, a challenger, or a pollbook**
7 **holder under this title.**

8 **Sec. 2. A person may not challenge the right of an individual to**
9 **vote at an election in the precinct solely on the basis of the**
10 **individual's:**

11 (1) **enrollment in an educational institution; or**

12 (2) **registration to vote at an address that is housing provided**
13 **for students by the educational institution.**

14 **Sec. 3. Except as permitted in a primary election under**
15 **IC 3-10-1, a person may not challenge the right of an individual to**
16 **vote at an election in the precinct solely on the basis of the**
17 **individual's:**

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- (1) actual or perceived affiliation with a political party; or
 (2) support or opposition to a candidate or the adoption of a public question.

Sec. 4. If a county election board determines that a person has violated a provision of this chapter, the board may remove a precinct election officer from office or void the credentials of a watcher, challenger, or pollbook holder.

Sec. 5. If a county election board determines that a person has knowingly violated a provision of this chapter, the county election board may refer the matter to the prosecuting attorney as a violation of IC 3-14-3-4 (obstruction of a voter).

SECTION 2. IC 3-5-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) A person does not gain residency in a precinct into which the person moves for:

- (1) temporary employment;
 (2) educational purposes; or
 (3) other purposes;

without the intent of making a permanent home in the precinct.

(b) Notwithstanding subsection (a), a precinct election officer, a watcher, a challenger, or a pollbook holder may not challenge the right of an individual to vote in the precinct solely on the basis of the individual's:

- (1) enrollment in an educational institution; or
 (2) registration to vote at an address which is housing provided for students by the educational institution.

(c) A county election board may:

- (1) remove a precinct election officer or void the credentials of a watcher, challenger, or pollbook holder; or
 (2) refer the matter to the prosecuting attorney as a violation of IC 3-14-3-4 (obstruction of a voter);

if the board determines that the officer, watcher, challenger, or pollbook holder has violated subsection (b).

SECTION 3. IC 3-7-48-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5.** If a voter makes an oral or a written affirmation under section 5 or 7 of this chapter and is then challenged under IC 3-10-1 or IC 3-11-8 as ineligible to vote in the precinct, the voter shall be provided with a provisional ballot under IC 3-11.7 rather than a regular official ballot. The affidavit executed under this chapter serves as a sufficient affidavit for the voter to receive a provisional ballot under IC 3-11.7.

SECTION 4. IC 3-10-1-7.2, AS ADDED BY P.L.109-2005,

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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.2. (a) Except as provided in subsection (e), a voter who desires to vote an official ballot at a primary election shall provide proof of identification.

(b) Except as provided in subsection (e), before the voter proceeds to vote in a primary election, a member of the precinct election board shall ask the voter to provide proof of identification. The voter must produce the proof of identification before being permitted to sign the poll list.

(c) If:

(1) the voter is unable or declines to present the proof of identification; or

(2) a member of the precinct election board determines that the proof of identification presented by the voter does not qualify as proof of identification under IC 3-5-2-40.5;

a member of the precinct election board shall challenge the voter as prescribed by IC 3-11-8.

(d) If the voter executes a challenged voter's affidavit under section 9 of this chapter or ~~IC 3-11-8-22~~, **IC 3-11-8-22.1**, the voter may:

(1) sign the poll list; and

(2) receive a provisional ballot.

(e) A voter who votes in person at a precinct polling place that is located at a state licensed care facility where the voter resides is not required to provide proof of identification before voting in a primary election.

SECTION 5. IC 3-10-1-24.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24.6. ~~(a) This section applies after December 31, 2005.~~

~~(b)~~ **(a)** In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under section 7 of this chapter. If the board determines that the voter's signature is authentic, the voter may then vote.

~~(c)~~ **(b)** If either poll clerk doubts the voter's identity following the comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by IC 3-11-8. If the poll clerk does not execute a challenger's affidavit under IC 3-11-8-21 or if the voter executes a challenged voter's affidavit under ~~IC 3-11-8-22~~, **IC 3-11-8-22.1**, the voter may then vote.

SECTION 6. IC 3-10-10-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. If a voter executes an affidavit under this**

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chapter and is then challenged under IC 3-11-8 as ineligible to vote in the precinct, the voter shall be provided with a provisional ballot under IC 3-11.7 rather than a regular official ballot. The affidavit executed under this chapter serves as a sufficient affidavit for the voter to receive a provisional ballot under IC 3-11.7.

SECTION 7. IC 3-10-11-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. If a voter executes an affidavit under this chapter and is then challenged under IC 3-10-1 or IC 3-11-8 as ineligible to vote in the precinct, the voter shall be provided with a provisional ballot under IC 3-11.7 rather than a regular official ballot. The affidavit executed under this chapter serves as a sufficient affidavit for the voter to receive a provisional ballot under IC 3-11.7.**

SECTION 8. IC 3-10-12-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5. If a voter makes an oral or a written affirmation under this chapter and is then challenged under IC 3-10-1 or IC 3-11-8 as ineligible to vote in the precinct, the voter shall be provided with a provisional ballot under IC 3-11.7 rather than a regular official ballot. The oral or written affirmation made under this chapter serves as a sufficient affidavit for the voter to receive a provisional ballot under IC 3-11.7.**

SECTION 9. IC 3-11-8-22.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 22.1. (a) This subsection applies to a voter:**

- (1) whose name does not appear on the poll list for the precinct; and**
- (2) who produces a certificate of error issued under IC 3-7-48-1.**

If the voter is not challenged under IC 3-10-1 or this chapter, the voter shall be provided with a regular official ballot. However, as provided by IC 3-7-48-1(b), if the voter is challenged under IC 3-10-1 or this chapter, the voter must cast a provisional ballot after complying with IC 3-7-48-7.5 if the voter wishes to cast a ballot.

(b) This subsection applies to a voter:

- (1) whose name does not appear on the poll list for the precinct; and**
- (2) who makes an oral or a written affirmation in compliance with IC 3-7-48-5 that the voter continues to reside in the precinct at the address shown as the voter's former residence**

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in the voter registration record.

If the voter is not challenged under IC 3-10-1 or this chapter, the voter shall be provided with a regular official ballot. However, as provided by IC 3-7-48-7.5, if the voter is challenged under IC 3-10-1 or this chapter, the voter must cast a provisional ballot after complying with IC 3-7-48-7.5 if the voter wishes to cast a ballot.

(c) This subsection applies to a voter:

(1) whose name does not appear on the poll list for the precinct; and

(2) who produces a registration receipt that complies with IC 3-7-48-7.

If the county election board provides the precinct election board with the information required under IC 3-7-48-7(a)(2) and the voter is not challenged under IC 3-10-1 or this chapter, the voter shall be provided with a regular official ballot. However, as provided by IC 3-7-48-7.5, if the voter is challenged under IC 3-10-1 or this chapter, the voter must cast a provisional ballot after complying with IC 3-7-48-7.5 if the voter wishes to cast a ballot.

(d) This subsection applies to a voter:

(1) whose name does not appear on the poll list for the precinct; and

(2) who is not described by subsection (a), (b), or (c).

If the voter is challenged under IC 3-10-1 or this chapter, the voter shall be provided with a provisional ballot under IC 3-11.7 instead of a regular official ballot if the voter wishes to cast a ballot. The voter may proceed to cast a provisional ballot after executing a challenged voter's affidavit under section 23 of this chapter if the voter wishes to cast a ballot.

(e) This subsection applies to a voter:

(1) whose name appears on the poll list for the precinct; and

(2) who no longer resides in the precinct but is entitled to vote at the precinct under IC 3-10-10, IC 3-10-11, or IC 3-10-12.

If the voter executes an affidavit in compliance with IC 3-10-10, IC 3-10-11, or IC 3-10-12, and the voter is not challenged under IC 3-10-1 or this chapter, the voter shall be provided with a regular official ballot. However, as provided by IC 3-10-10-9, IC 3-10-11-4.5, or IC 3-10-12-5, if the voter is challenged under IC 3-10-1 or this chapter, the voter must cast a provisional ballot if the voter wishes to cast a ballot.

(f) This subsection applies to a voter:

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(1) whose name appears on the poll list for the precinct; and

(2) who is not described in subsection (e).

If the voter is challenged under IC 3-10-1 or this chapter, the voter shall be provided with a provisional ballot under IC 3-11.7 rather than a regular official ballot if the voter wishes to cast a vote. The voter may proceed to cast a provisional ballot after executing a challenged voter's affidavit under section 23 of this chapter if the voter wishes to cast a ballot.

SECTION 10. IC 3-11-8-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) If a challenged voter has already made an affirmation or executed an affidavit under IC 3-7-48-7.5, IC 3-10-10-9, IC 3-10-11-4.5, or IC 3-10-12-5, the challenged voter is not required to execute an additional affidavit under this section.

(b) The affidavit of a challenged voter required by ~~section 22~~ **section 22.1** of this chapter must be sworn and affirmed and must contain the following:

(1) A statement that the voter is a citizen of the United States.

(2) The voter's date of birth to the best of the voter's information and belief.

(3) A statement that the voter has been a resident of the precinct for thirty (30) days immediately before this election or is qualified to vote in the precinct under IC 3-10-10, IC 3-10-11, or IC 3-10-12.

(4) The voter's name and a statement that the voter is generally known by that name.

(5) A statement that the voter has not voted and will not vote in any other precinct in this election.

(6) The voter's occupation.

(7) The voter's current residential address, including the street or number and if applicable, the voter's residential address thirty (30) days before the election, and the date the voter moved.

(8) A statement that the voter understands that making a false statement on the affidavit is punishable under the penalties of perjury.

(9) ~~After December 31, 2003, If the individual's name does not appear on the registration list, and the individual is not entitled to vote under IC 3-7-48-1, IC 3-7-48-5, IC 3-7-48-7, IC 3-10-10, IC 3-10-11-2, or IC 3-10-12;~~ a statement that the individual registered to vote and where the individual believes the individual registered to vote during the registration period described by:

(A) IC 3-7-13-10; or

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- 1 (B) IC 3-7-36-11, if the voter registered under that section.
- 2 SECTION 11. IC 3-11-8-25.1, AS AMENDED BY P.L.109-2005,
- 3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: Sec. 25.1. ~~(a) This section applies after December~~
- 5 ~~31, 2005.~~
- 6 ~~(b)~~ (a) Except as provided in subsection ~~(f)~~; (e), a voter who desires
- 7 to vote an official ballot at an election shall provide proof of
- 8 identification.
- 9 ~~(c)~~ (b) Except as provided in subsection ~~(f)~~; (e), before the voter
- 10 proceeds to vote in the election, a member of the precinct election
- 11 board shall ask the voter to provide proof of identification. The voter
- 12 shall produce the proof of identification before being permitted to sign
- 13 the poll list.
- 14 ~~(d)~~ (c) If:
- 15 (1) the voter is unable or declines to present the proof of
- 16 identification; or
- 17 (2) a member of the precinct election board determines that the
- 18 proof of identification provided by the voter does not qualify as
- 19 proof of identification under IC 3-5-2-40.5;
- 20 a member of the precinct election board shall challenge the voter as
- 21 prescribed by this chapter.
- 22 ~~(e)~~ (d) If the voter executes a challenged voter's affidavit under
- 23 ~~section 22~~ **section 22.1** of this chapter, the voter may:
- 24 (1) sign the poll list; and
- 25 (2) receive a provisional ballot.
- 26 ~~(f)~~ (e) A voter who votes in person at a precinct polling place that
- 27 is located at a state licensed care facility where the voter resides is not
- 28 required to provide proof of identification before voting in an election.
- 29 ~~(g)~~ (f) After a voter has passed the challengers or has been sworn in,
- 30 the voter shall be instructed by a member of the precinct election board
- 31 to proceed to the location where the poll clerks are stationed. The voter
- 32 shall announce the voter's name to the poll clerks or assistant poll
- 33 clerks. A poll clerk, an assistant poll clerk, or a member of the precinct
- 34 election board shall require the voter to write the following on the poll
- 35 list:
- 36 (1) The voter's name.
- 37 (2) Except as provided in subsection ~~(h)~~; (k), the voter's current
- 38 residence address.
- 39 ~~(h)~~ (g) The poll clerk, an assistant poll clerk, or a member of the
- 40 precinct election board shall:
- 41 (1) ask the voter to provide or update the voter's voter
- 42 identification number;

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(2) tell the voter the number the voter may use as a voter identification number; and

(3) explain to the voter that the voter is not required to provide or update a voter identification number at the polls.

~~(i)~~ **(h)** The poll clerk, an assistant poll clerk, or a member of the precinct election board shall ask the voter to provide proof of identification.

~~(j)~~ **(i)** In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures, the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

~~(k)~~ **(j)** If, in a precinct governed by subsection ~~(h)~~ **(g)**:

(1) the poll clerk does not execute a challenger's affidavit; or

(2) the voter executes a challenged voter's affidavit under ~~section 22~~ **section 22.1** of this chapter or executed the affidavit before signing the poll list;

the voter may then vote.

~~(l)~~ **(k)** Each line on a poll list sheet provided to take a voter's current address must include a box under the heading "Address Unchanged" so that a voter whose residence address shown on the poll list is the voter's current residence address may check the box instead of writing the voter's current residence address on the poll list.

SECTION 12. IC 3-11.5-4-16, AS AMENDED BY P.L.109-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) If an absentee ballot is challenged under section 15 of this chapter, the absentee voter's application for an absentee ballot shall be considered as the affidavit required to be made by a voter when challenged at the polls while voting in person.

(b) Except as provided in subsection (c), the challenge procedure under this section is the same as though the ballot was cast by the voter in person.

(c) An absentee voter is not required to provide proof of identification.

(d) If a proper affidavit by a qualified person in the form required by ~~IC 3-11-8-22~~ **IC 3-11-8-22.1** is made that would entitle the absentee voter to vote if the absentee voter had personally appeared, the couriers shall return the affidavit to the county election board in the same envelope as the certificate returned under section 9 of this chapter.

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(e) The absentee ballot cast by the challenged voter shall be counted if the county election board makes the findings required under section 11 of this chapter.

SECTION 13. IC 3-11.7-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As provided by 42 U.S.C. 15482, this section applies to the following individuals:

(1) An individual:

(A) whose name does not appear on the registration list; and

(B) who is **not permitted to vote challenged under IC 3-10-1 or IC 3-11-8 after the voter makes an oral or a written affirmation under IC 3-7-48-5 or IC 3-7-48-7 or after the voter produces a certificate of error under IC 3-7-48-1.**

~~IC 3-7-48-5, IC 3-7-48-7, IC 3-10-10, IC 3-10-11-2, or IC 3-10-12.~~

(2) An individual described by IC 3-10-1-10.5, IC 3-11-8-23.5, or IC 3-11-8-27.5 who is challenged as not eligible to vote.

(3) An individual who seeks to vote in an election as a result of a court order (or any other order) extending the time established for closing the polls under IC 3-11-8-8.

(b) ~~This subsection applies after December 31, 2003.~~ As required by 42 U.S.C. 15483, a voter who has registered to vote but has not:

(1) presented identification required under 42 U.S.C. 15483 to the poll clerk before voting in person under ~~IC 3-11-8-25;~~ **IC 3-11-8-25.1;** or

(2) filed a copy of the identification required under 42 U.S.C. 15483 to the county voter registration office before the voter's absentee ballot is cast;

is entitled to vote a provisional ballot under this article.

(c) A precinct election officer shall inform an individual described by subsection (a)(1) or (a)(2) that the individual may cast a provisional ballot if the individual:

(1) is eligible to vote under IC 3-7-13-1;

(2) submitted a voter registration application during the registration period described by IC 3-7-13-10 (or IC 3-7-36-11, if the voter registered under that section); and

(3) executes an affidavit described in IC 3-10-1-9 or IC 3-11-8-23.

(d) A precinct election officer shall inform an individual described by subsection (a)(3) that the individual may cast a provisional ballot.

SECTION 14. IC 3-11.7-5-1.5, AS ADDED BY P.L.221-2005, SECTION 99, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. (a) This section applies to a provisional ballot that **the county election board determines, by a majority vote**

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of its members and in accordance with this title:

(1) has been marked and cast by a voter in compliance with this title; but

(2) may not otherwise be counted solely as the result of the act or failure to act of an election officer.

(b) This section does not apply to either of the following:

(1) A provisional ballot cast by an individual who seeks to vote in an election as the result of a court or other order extending the time established for closing the polls under IC 3-11-8-8 if the county election board determines or is directed under a court or other order that all provisional ballots issued after regular poll closing hours are not to be counted.

(2) A provisional ballot that is required to be rejected by a county election board under section 2(b) of this chapter as the result of information or lack of information provided by a voter registration agency.

~~(b)~~ **(c) The sealed envelope containing** a provisional ballot described in subsection (a) shall nevertheless be **opened under section 4 of this chapter and the provisional ballot** counted unless evidence of fraud, tampering, or misconduct affecting the integrity of the ballot is demonstrated. The act or failure to act by an election officer is not by itself evidence of fraud, tampering, or misconduct affecting the integrity of the ballot.

~~(c)~~ **(d) Notwithstanding subsection (b); (c), if the county election board, by a majority vote of its members, determines that there is a evidence presented to the board demonstrating that the individual who cast the provisional ballot was ineligible to cast a regular ballot in that precinct, or evidence has been presented to the board demonstrating any other reason set forth in HAVA or this title not to count a provisional ballot, the provisional ballot may not be counted.**

SECTION 15. IC 3-11-8-22 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 16. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 128, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, line 23, strike "IC 3-11-8-25;" and insert "**IC 3-11-8-25.1**";.

Page 10, delete lines 30 through 39.

and when so amended that said bill do pass.

(Reference is to SB 128 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 10, Nays 0.

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